

1 U.S. DISTRICT JUDGE THOMAS S. ZILLY
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
TACOMA DIVISION

KEITH KOENEN,	Civil No. 3:19-cv-05110-TSZ
Plaintiff,	
vs.	STIPULATED RESPONSE TO MOTION FOR FEES
COMMISSIONER OF SOCIAL SECURITY, Defendant.	Note on Motion Calendar: November 1, 2021.

Plaintiff seeks an award of attorney fees under the (EAJA), 28 U.S.C. § 2412 *et seq.* After Plaintiff filed the present motion, the parties engaged in good faith negotiations. Defendant, the Acting Commissioner of Social Security (Commissioner), by her undersigned counsel, and Plaintiff, by his counsels, Elie Halpern, now agree and stipulate as follows:

1. Plaintiff was the prevailing party in this matter;
2. Plaintiff was an individual whose net worth did not exceed \$2,000,000 at the time the civil action was filed;
3. The position of the Commissioner was not substantially justified;
4. An award of fees is not unjust;
5. An award of \$6,132.36 in fees to Jeff Baird constitutes reasonable attorney fees in this matter;

1 6. An award of \$7.28 constitutes reasonable expenses in this matter; and

2 7. Payment of these amounts shall constitute a complete release from and bar to any and all

3 claims Plaintiff may have relating to EAJA fees in connection with this action. The parties

4 further agree that the EAJA award is without prejudice to the right of Plaintiff's attorney to

5 seek attorney fees pursuant to Social Security Act § 206(b), 42 U.S.C. § 406(b), subject to

6 the offset provisions of the EAJA. *See* 28 U.S.C. § 2412(c)(1) (2006).

7 8. Under *Astrue v. Ratliff*, 130 S. Ct. 2521, 2528-29 (2010), EAJA fees awarded by this Court

8 belong to the Plaintiff and are subject to offset under the Treasury Offset Program (31 U.S.C.

9 § 3716(c)(3)(B) (2006)). Any EAJA fees should therefore be awarded to Plaintiff and not to

10 Plaintiff's attorney. If, after receiving the Court's EAJA fee order, the Commissioner (1)

11 determines that Plaintiff has assigned his right to EAJA fees to his attorney; (2) determines

12 that Plaintiff does not owe a debt that is subject to offset under the Treasury Offset Program,

13 and (3) agrees to waive the requirements of the Anti-Assignment Act, then the EAJA fees

14 will be made payable to Plaintiff's attorney via check or electronic fund transfer. However,

15 if there is a debt owed under the Treasury Offset Program, the Commissioner cannot agree

16 to waive the requirements of the Anti-Assignment Act, and the remaining EAJA fees after

17 offset will be paid by a check or electronic fund transfer to Plaintiff but delivered to

18 Plaintiff's attorney.

19 DATED this 1st day of November 2021.

1 Respectfully submitted,
2

3 s/ Thomas M. Elsberry
4 THOMAS M. ELSBERRY
5 Special Assistant United States Attorney
6 Office of the General Counsel
7 Social Security Administration
701 Fifth Avenue, Suite 2900 M/S 221A
Seattle, WA 98104-7075
Telephone: (206) 615-2112
Fax: (206) 615-2531
thomas.elsberry@ssa.gov

8 DATED this 1st day of November 2021.
9

10 s/ Thomas M. Elsberry for
11 ELIE HALPERN
12 Attorney for Plaintiff
13 (PER AUTHORIZATION)

CERTIFICATE OF SERVICE

14 I hereby certify that the foregoing Stipulated Response to Motion for Fees was filed with
15 the Clerk of the Court on November 1, 2021, using the CM/ECF system which will send
16 notification of such filing to the following: Elie Halpern.

17 s/ Thomas M. Elsberry
18 THOMAS M. ELSBERRY
19 Special Assistant United States Attorney
20 Office of the General Counsel
21
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
TACOMA DIVISION

KEITH KOENEN,

Civil No. 3:19-CV-05110-TSZ

Plaintiff,

VS.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

For the reasons set forth in the parties' stipulated motion, docket no. 27, for attorney fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, *et seq.*, and good cause shown, IT IS HEREBY ORDERED AS FOLLOWS:

1. Plaintiff is hereby awarded \$6,132.36 in fees to Jeff Baird and \$7.28 in expenses under the EAJA.
2. Under *Astrue v. Ratliff*, 130 S. Ct. 2521, 2528-29 (2010), EAJA fees awarded by this Court belong to the Plaintiff and are subject to offset under the Treasury Offset Program (31 U.S.C. § 3716(c)(3)(B) (2006)). Any EAJA fees should therefore be awarded to Plaintiff and not to Plaintiff's attorney. If, after receiving the Court's EAJA fee order, the Commissioner (1) determines that Plaintiff has assigned his right to EAJA fees to

1 his attorney; (2) determines that Plaintiff does not owe a debt that is subject to offset
2 under the Treasury Offset Program, and (3) agrees to waive the requirements of the
3 Anti-Assignment Act, then the EAJA fees will be made payable to Plaintiff's attorney
4 via check or electronic fund transfer.

5 3. However, if there is a debt owed under the Treasury Offset Program, the Commissioner
6 cannot agree to waive the requirements of the Anti-Assignment Act, and the remaining
7 EAJA fees after offset will be paid via check or electronic fund transfer to Plaintiff but
8 delivered to Plaintiff's attorney.

9
10 DATED this 8th day of November, 2021.



11
12 Thomas S. Zilly
13 United States District Judge

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15 Presented by:

16 s/ Thomas M. Elsberry
17 THOMAS M. ELSBERRY
18 Special Assistant United States Attorney
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